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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/799,115

03/11/2004

Brian J. Brozell

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27081

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06/22/2007

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

06/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/799,115

Applicant(s)

BROZELL, BRIAN J.

Examiner

James N. Smalley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Amendment

1. Due to the new grounds of rejection, this action is hereby made **Non-Final**.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss et al. US 4,032,028 in view of Landen US 3,951,289.

Reiss '028 teaches a threaded closure cap (20) comprising a base wall (24), a skirt (26), an internal thread (30), an internal stop lug (38, 42) and with a stop lug (44) which engages with an external container neck projection (34) located opposite the open end with respect to the threads, to prevent advancement or removal of a closure cap. Seal element (52) functions as a biasing element but does not comprise an annular wall.

Landen '289, in the embodiment of figures 4-5, teaches an annular wall/outer surface (20') with tapered portion/angled surface (19') to seal against a container rim taper (18) which also serves to bias the locking lugs (15) into engagement with container lugs (13) in order to provide an axially-upwards biasing force and engage the locking cams and prevent removal by a child. By forming the wall integral with the closure, as opposed to providing a seal formed of a separate material such as the sealing disc of Reiss '028, the closure can be molded in one step without an additional process which would make manufacturing the closure more efficient.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container neck opening interior profile, as well as the closure sealing means, of Reiss

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'028, providing the conical surface on the neck interior wall, and providing the integral annular wall, all taught by Landen '289, motivated by the benefit of forming the closure in a more efficient process.

Regarding claims 3 and 8, Reiss '028 fails to teach the container projection having a tangential leg portion which axially traps the closure internal locking lug (claim 3) and whereby the projection and the locking lug have cooperating cam surfaces (claim 8).

Landen '289 teaches container neck projection having tangential projection (21) and cam surface (23) while the closure lugs (22) have corresponding cam surfaces which engage the neck projection and are axially held in the pocked formed by (21). This provides for a more secure engagement between the container projection and the closure lug.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container neck projection (34) and closure lug (44) of Reiss '028, providing the projection and lug taught by Landen '289, motivated by the benefit of a more secure engagement between the lugs, and thus a greater chance of preventing access into the container by a child.

Response to Arguments

4. Applicant's arguments filed 06 October 2006 have been fully considered but they are not persuasive.

- **Applicant argues that Reiss '028 and Landen '289 are non-analogous because they directed to different types of child-resistant closures.**

In response to applicant's argument that Reiss '028 and Landen '289 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Examiner first notes that Applicants remarks admit that both inventions are drawn to child-resistant closures, and thus are at the very least some-what analogous because of this fact. Secondly, Examiner notes that while one is drawn to a threaded system and the other a bayonet system, they are still analogous because both require a twisting motion which cams the

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closure onto the container in an axial movement, and with further requires a biasing element resisting this motion in order to provide an upward force to engage the child resistant means so that the closure cannot be removed. Also, both closures must be pressed axially downwardly in order to remove them from the associated containers.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns

 6/19/2007


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